

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

SARA ROUNDPOINT, *individually, and as
Administratrix of the Estate of JEREMY KEARNS,*

Plaintiff,

8:19-CV-0647
(DJS)

v.

CATALYST AVIATION, LLC,

Defendant.

APPEARANCES:

OF COUNSEL:

MARTIN HARDING & MAZZOTTI, LLP
Attorneys for Plaintiff
P.O. Box 15141
1 Wall Street
Albany, New York 12212

THOMAS J. MORTATI, ESQ.

BROWN GAVALAS & FROMM, LLP
Attorneys for Defendant
60 E. 42nd Street
New York, New York 10017

FRED G. WEXLER, ESQ.
ROBERT JAN BROWN, ESQ.

DANIEL J. STEWART
United States Magistrate Judge

ORDER

On October 30, 2018, in Beekmantown, New York, Jeremy P. Kearns was at work and the passenger in an Aerospatiale helicopter owned and operated by Defendant Catalyst Aviation, LLC, that crashed into an electrical wire while performing external load operations. Dkt. No. 62-2, Mortati Aff. at ¶¶ 3-7. The helicopter caught fire and faced with no real choice, Mr. Kearns jumped from the helicopter to the ground below,

causing severe injuries including a ruptured vessel in his heart, resulting in Mr. Kern's death. *Id.* at ¶¶ 8-12. Plaintiff Sara Roundpoint is Mr. Kearns' former spouse, the mother and natural guardian of his two children, and the administratrix of his estate. Dkt. No. 62-1, Roundpoint Aff. at ¶¶ 1-3.

Presently before the Court is Plaintiff's Motion to approve a proposed settlement of this tragic wrongful death lawsuit. Dkt. No. 62. Defendants have not opposed the Motion. Because this action involves the alleged wrongful death of Jeremy Kearns, a formal motion to approve the settlement is required pursuant to New York Estates, Powers, and Trust Law ("EPTL") § 5-4.6, and New York Surrogate's Court Procedure Act § 2204. Regarding the proposed settlement, the Court has considered the total settlement of six million seven hundred and fifty thousand dollars (\$6,750,000.00) and finds it to be an appropriate resolution of the matter after considering the merits of the action, as well as potential defenses. *See* EPTL 5-4.6(a); *Neilson v. Colgate-Palmolive Co.*, 199 F.3d 642, 654 (2d Cir. 1999). Having overseen discovery in this action and having participated in a lengthy settlement conference, the Court is fully familiar with the facts of this case and the issues that would be presented were the matter to proceed to trial. Based upon that experience and having spoken extensively to Sara Roundpoint, as well as counsel for Catalyst Aviation, LLC, the Court concludes that the proposed settlement is one that is beneficial to all the parties and represents an appropriate resolution of this difficult case.

It is also the Court's obligation to review the proposed \$2,250,000.00 in attorneys' fees, expenses, and litigation costs, requested by Plaintiff's counsel. Upon consideration

of the Affidavit of Attorney Thomas Mortati, and the supporting documentation, the Court approves the amount of fees and expenses, which are consistent with the retainer agreement entered into by Ms. Roundpoint, as well as this Court's observation of the substantial amount of work put into this matter by her attorneys.

ACCORDINGLY, it is hereby

ORDERED, that the Motion of Sara A. Roundpoint, as Administrator of the Estate of Jeremy Kearns, seeking consent to compromise and settle the above-entitled wrongful death lawsuit for the total amount of six million seven hundred and fifty thousand dollars (\$6,750,000.00) is granted and the claim for wrongful death of Jeremy P. Kearns is settled in the amount of six million seven hundred and fifty thousand dollars (\$6,750,000.00); and it is further

ORDERED, that the Plaintiff Administrator is directed to deliver to Defendant Catalyst Aviation, LLC and its insurer a general release together with a stipulation of discontinuance on the merits which shall be held in escrow until full and final payment has been made, and the Plaintiff has been directed to execute any other instruments as may be necessary or required to effectuate the settlement; and it is further

ORDERED, that the Court has determined, after due inquiry as to all charges against the amount recovered, that the fees and disbursements of Plaintiff's attorneys are reasonable and proper charges against the settlement proceeds, based on the work that was performed and the total amount recovered; and it is further

ORDERED, that payment to Martin, Harding & Mazzotti, LLP, in accordance with the Retainer Agreement, shall be made in the total sum of two million two hundred and fifty thousand dollars (\$2,250,000.00), representing payment of disbursements to date in the sum of one hundred eighty-six thousand nine hundred thirty-seven dollars and 89 cents (\$186,937.89) and legal fees of two million sixty-three thousand, sixty-two dollars and eleven cents (\$2,063,062.11); and it is further,

ORDERED, that all other matters and issues not decided by this Court are hereby referred to St. Lawrence County Surrogate's Court for determination and manner of distribution of the net proceeds to Mr. Kearns' two children, the beneficiaries of the estate, and reimbursement of the Worker's Compensation lien; and it is further

ORDERED, that Catalyst Aviation, LLC, by and through its insurer, be directed to pay within thirty (30) days of the filing of this Court's Order approving the settlement and the receipt of a duly executed Release, Plaintiff's counsel's fees and disbursements, the following:

Six million seven hundred and fifty thousand dollars (\$6,750,000.00) payable to Sara A. Roundpoint as Administrator of the Estate of Jeremy Kearns and Martin, Harding & Mazzotti, LLP; and it is further,

ORDERED, that pursuant to EPTL section 5-4.6(a)(1), Martin, Harding & Mazzotti, LLP, attorneys for the Estate shall pay from the account all due and payable expenses, *excluding attorneys' fees*, including:

a. Legal disbursements and expenses to Martin, Harding & Mazzotti, LLP of

One hundred eighty-six thousand nine hundred thirty-seven dollars and 89

cents (\$186,937.89); and it is further

ORDERED, that pursuant to EPTL 5-4.6(a)(2), attorneys' fees in the amount of two million sixty-three thousand, sixty-two dollars and eleven cents (\$2,063,062.11), shall be immediately payable to Martin, Harding & Mazzotti, LLP from the abovementioned escrow account upon submission to this Court of proof of filing of the Petition for allocation and distribution in the Surrogate's Court for the County of St. Lawrence; and it is further

ORDERED, that the balance of the settlement proceeds in the amount of four million five hundred thousand (\$4,500,000.00) for the Estate of Jeremy P. Kearns, shall be deposited into an interest bearing trust or escrow account and/or any sum(s) or portion(s) of said balance of settlement proceeds that may be paid into structured settlement(s) on behalf of the estate beneficiaries and/or reimbursement of Worker's Compensation lien be held until further order of the St. Lawrence County Surrogate's Court directing the determination and manner of distribution of said proceeds is made, filed and served and/or any sum(s) or portion(s) of said balance of settlement proceeds that may be paid into structured settlement(s) or annuities on behalf of the minor estate beneficiaries and administrator fees, if any; and it is further

ORDERED, that pursuant to EPTL 5-4.6(a)(3), attorneys for the Estate of Jeremy Kearns, shall continue to serve as attorneys for the Estate until entry of a final Decree by the Surrogate's Court for the County of St. Lawrence; and it is further

ORDERED, that this Court directs its continuing jurisdiction for purposes of enforcing this Order and settlement beyond the filing of a stipulation of discontinuance.

SO ORDERED.

Dated: March 17, 2022
Albany, New York



Daniel J. Stewart
U.S. Magistrate Judge

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